

**OFFICE OF THE DISTRICT ATTORNEY**  
County of San Luis Obispo



**MEMORANDUM**

TO: James P. Erb, CPA, Auditor-Controller-Treasurer-Tax Collector

FROM: Dan Dow, District Attorney *DD*

CC: Dan Buckshi, County Administrative Officer  
Rita Neal, County Counsel  
Tami Douglas-Schatz, Human Resources Director

DATE: April 9, 2015

SUBJ: Whistleblower Complaint 121179945 Off-Book Compensatory Time

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I have received and reviewed your report dated April 8, 2015 which contains your findings regarding a recent whistleblower complaint. The referenced whistleblower complaint alleges that District Attorney Staff members receive nine days of compensation time per year without legal authority for the paid time off. In response, it is important to provide historical context to your factual findings. For the reasons explained in my conclusion below, the practice of providing compensatory time-off is eliminated effective immediately.

**BACKGROUND**

The current practice of providing compensatory time-off (CTO) to Deputy District Attorneys is not new. It has been a longstanding, open, and well-documented past practice for more than 30 years, spanning terms of three previous elected District Attorneys. Under this practice, every Deputy District Attorney (DDA) was eligible to receive nine days of CTO per calendar year once they had completed the initial probationary period of employment. The CTO is directly related to the requirement for a DDA to be placed "on call" during non-business hours, typically for a two week period, to answer law enforcement officers' calls for assistance related to obtaining search warrants.. The practice is open and transparent to the extent that new hire DDAs were told about this as a benefit during the recruitment process.

To illustrate, Assistant District Attorney Lee Cunningham was hired in July of 1985 and was told at that time that he would receive this benefit. It was explained to Mr. Cunningham that the CTO time was provided in recognition of each Deputy District Attorney's duty to be "on call" to review search warrants for law enforcement for a period of time during the year. I have made contact with Assistant District Attorney (Retired) Dan Hilford to inquire about when this practice began. Mr. Hilford indicated that his best recollection is that District Attorney Christopher Money began the process sometime in his term between 1978 and 1984.

## **COMMON PRACTICE**

San Luis Obispo County District Attorney's CTO program is not unusual. Upon an informal review of other California Counties, it is clear that the practice of providing specific compensation for Deputy District Attorneys who are performing "on call" duty is common. The following is a representative sample of what is provided in several other counties:

Santa Barbara County	\$450.00 per pay period for "Duty Deputy"
Monterey County	\$276.75 per week when on Law Enforcement Advisory duty
Marin County	\$2000.00 for two weeks on-call per year
Kern County	One quarter of hourly pay rate for the hours on standby
San Francisco County	8 hrs Admin leave per week of standby (max 40 hrs/year)
Stanislaus County	\$150.00 per week when on-call
Santa Clara County	8 hrs Admin leave per week of on-call, plus 8 hrs if called

The important distinction to make is that each of the example counties referenced above negotiated the specific "on-call" benefits with the employee bargaining units and the details were contained in a written memorandum of understanding between the parties that was adopted by the Board of Supervisors.

## **CONCLUSION**

In addition to your report, I have received direction from both County Counsel and the County Administrative Officer that our CTO practice must cease immediately. Therefore, effective immediately, the practice of providing CTO to DDAs is discontinued.

As your memorandum references, the California Constitution, Article 11, Section 10 (a) provides, "[a] local government body may not grant extra compensation or extra allowance to a public officer, public employee, or contractor after service has been rendered or a contract has been entered into and performed in whole or in part, or pay a claim under an agreement made without authority of law."

While the effected employees may dispute the conclusion that CTO is without authority of law, as District Attorney I cannot continue the past practice without the approval of the County Administrative Officer and/or the Board of Supervisors.

Finally, it is important to note that the Deputy District Attorneys who have received CTO have done so relying in good faith on the Department's representation for more than 30 years that it was a component of the employee benefit package.